

App No 35781

VOLUNTARY AGREEMENT

THIS AGREEMENT made this 30th day of November, 1998, by and between XANDO, INCORPORATED ("Xando") and ADVISORY NEIGHBORHOOD COMMISSION 6B ("Protestant").

WITNESSETH

WHEREAS, Xando has entered into a lease for a portion of the building located at 301 Pennsylvania Avenue, SE, Washington, D.C. (the "Building") and plans to operate a cafe and restaurant facility under the trade name "Xando" (the "Business").

WHEREAS, Xando has applied for a Retailer's License Class "CR" to be issued by the Alcoholic Beverage Control Board of the District of Columbia;

WHEREAS, Protestant has filed a written objection to the granting of the license pursuant to the provisions of §14(b) of the Alcoholic Beverage Control Act, D.C. Code §25-115(b);

WHEREAS, in response to the concerns of the community as professed by Protestant and others, Xando has agreed to certain restrictions on its operations and the parties desire to enter into an agreement to resolve Protestant's objections to the alcoholic beverage license application; and

WHEREAS, the parties have agreed to enter into this Agreement and to request the Alcoholic Beverage Control Board to approve the issuance of Xando's license application conditioned upon Xando's compliance with the terms of this Agreement and with the understanding that the terms shall be incorporated and be a part of the license granted to Xando, its successors, transferees or assigns.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the parties agree as follows:

1. Xando agrees that its business shall be operated as a coffee cafe and restaurant only featuring the sale of alcoholic beverages as is currently consistent with the other restaurants forming the retail chain of which Xando is a part. Any bar to be located in the Business shall emphasize the sale of coffee and coffee drinks including coffee drinks with alcoholic beverages.
2. Xando agrees to amend its application to eliminate the enclosed sidewalk cafe area on the Third Street side of the Building and to add the second floor of the Building as part of the Business premises. Protestant does not object to Xando's use of the Building in this fashion. Outdoor unenclosed sidewalk cafe seating shall be limited to the areas reflected on Exhibit A attached hereto and incorporated by reference herein. No tables shall be placed by Xando outside the boundaries reflected on Exhibit A. Xando specifically agrees not to seek or obtain an increase in the public space area designed on Exhibit A or materially alter the structural appearance of the premises facing Third Street as generally depicted in Exhibit B without first

having obtained the prior written consent of Protestant. However, Xando shall be permitted to make any changes necessary to satisfy any code requirement, historic preservation, the Fine Arts Commission or the like without Protestant's prior consent.

3. Xando shall seek permission to enclose the area on the Third Street side of the Building depicted on Exhibit A with a fence similar to the existing fences on the block. The area inside the fence shall be landscaped by Xando, and shall not be used by Xando for the service of patrons or guests.

4. Xando shall discontinue service in the outdoor seating area at 11:30 p.m. weekdays and 12:30 a.m. on Friday and Saturday nights.

5. Xando shall not provide recorded or live music or other entertainment outside of the Building. The volume of music shall not be audible from the steps of its residents across Third Street.

6. All windows facing Third Street on both floors shall remain fixed such that they cannot be opened. Protestant shall support Xando in attempting to obtain approval for the opening of windows facing Pennsylvania Avenue. Any window or door openings on Third Street shall be designed to blend with the architectural character of the homes on the block as approved by Historic Preservation Review Board and the Fine Arts Commission. Xando shall install window treatments in the Building on the windows on the first floor of the Building facing Third Street.

7. There shall be no signage on the Third Street side of the Building with the exception of any signage which might be located in the existing bay window which wraps the corner of the Building. Xando may, however, install awnings with the Xando logo over the windows facing Third Street provided all necessary approvals are obtained.

8. Entrance to the establishment shall be on Pennsylvania Avenue. Any exit on the Third Street side of the Building shall only be labeled as an emergency exit.

9. Xando shall use reasonable efforts to require liquor distributors, food purveyors and other vendors to transport materials through the front entrance of the Building located on Pennsylvania Avenue, S.E. and shall accept no deliveries through any back door or side door of the Building.

10. Xando shall store its trash in a dumpster located in the loading area behind the Building. Xando shall provide a decorative enclosure for the dumpster the design of which shall be reasonably acceptable to Protestant. Xando shall contract with a trash company to have trash picked up at least 4 days per week. The trash contract shall provide that the trash contractor shall not service the dumpster the earlier of 7:00 a.m. in the morning or the time that other trash is picked up in the neighborhood.

11. Xando shall, either immediately after the close of business each night, or before opening for business each day, pick up trash and litter which might accumulate on the area in front of and

on the side of the Building so as to keep these areas reasonably free of trash and debris.

12. Protestant hereby withdraws his protest and joins with Xando in requesting the Alcoholic Beverage Control Board to accept this Agreement as condition for approval of Xando's license. Protestant shall support Xando's public space permit application and any other permits which may be required in connection with the opening of the Business consistent with the terms of this Agreement.

13. This Agreement shall be binding upon Xando, its successors and assigns and shall survive expiration and renewal of Xando's alcoholic beverage license, provided that the license continues to be used by Xando, its successors or assigns at the Building.

14. Xando shall operate under the trade name Xando or such trade name as shall be adopted by a majority of the establishments forming the retail chain of which Xando is a part.

15. Xando's license shall not be transferable except in connection with a merger, consolidation or a combination or a sale of substantially all of the assets constituting the retail chain of which Xando's business is a part and provided that any such successor or assignee agrees to be bound by the provisions of this Agreement.

16. Protestant shall have the right to bring an action seeking the specific performance of Xando's obligations set forth in the preceding paragraph. If Protestant is successful in such action, Xando shall pay Protestant's reasonable attorney's fees and all costs of such suit.

17. Protestant shall notify Xando of any violation of the provisions of this Agreement and the parties shall use their best efforts to mutually and amicably resolve any such violation. In the event Xando shall fail to comply with the provisions of the Agreement after written notice from Protestant, the parties shall arbitrate the alleged violation in accordance with the rules of the American Arbitration Association. If it shall be found in the arbitration that Xando has materially breached the provisions of this Agreement, Xando shall be liable for the sum of One Thousand Dollars (\$1,000) for each such material violation plus the cost of the arbitration and Protestant's attorney's fees. Any amounts for which Xando shall be found liable hereunder shall be paid to an Internal Revenue Code §501(c)(3) charity as shall be designated by Protestant within thirty (30) days of the arbitrator's decision.

18. The provisions of sections 17 and 18 shall be in addition to and shall not be construed to limit Protestant's rights to seek enforcement of this Agreement under the provisions of 23 D.C.M.R. §1513.

20. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which when taken together, constitute one and the same document. That signature to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS

XANDO, INCORPORATED

By: 

PROTESTANT:

ADVISORY NEIGHBORHOOD
COMMISSION 6B

By: 

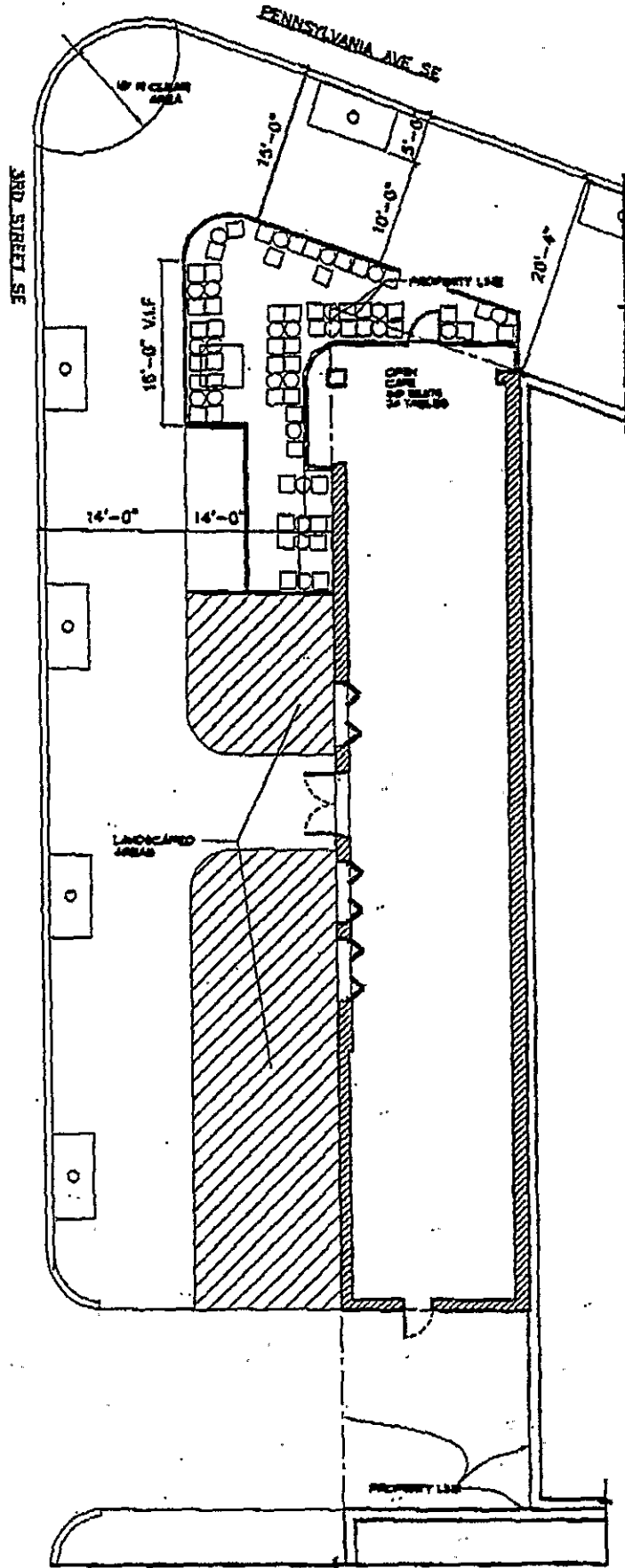
Thomas C. Wells, Chair



EXHIBIT A

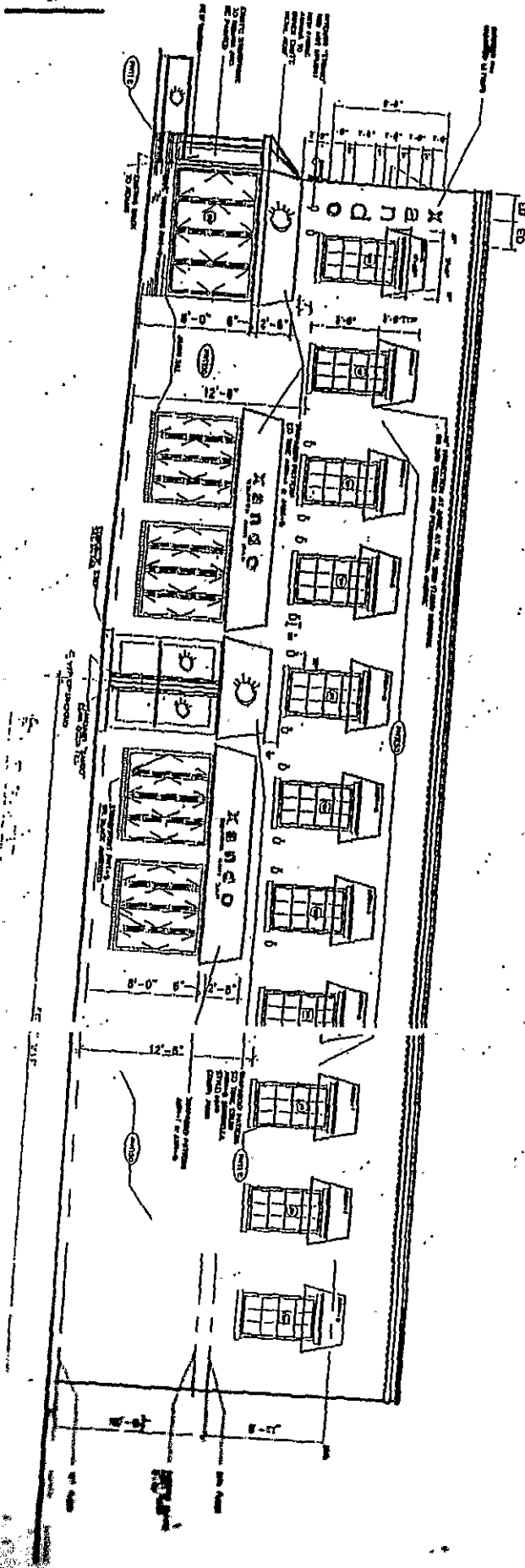
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TECTS INC
RTHOUSE ROAD
VIRGINIA 22182



SITE PLAN OPTION

EXHIBIT B



**BEFORE
THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of :

Xando, Inc.
t/a Xando Coffee & Bar

Application for a Retailer's Class
CR License -- new

301 Pennsylvania Avenue, S.E.
Washington, D.C.

Case No. 35789-98060P

Mary Weirich, Gottlieb Simon and Peter Waldron, Protestants

Andrew J. Kline, Esquire, on behalf of Applicants

**BEFORE: Vannie Taylor, III, Esquire, Chair
Dennis Bass, Member
Allen Beach, Member
Laverne King, Member
Max Salas, Member
Eydie Whittington, Member
Duane Wang, Member**

ORDER ON WITHDRAWN PROTEST

This matter, having been protested, came before the Board on July 22, 1998, in accordance with D.C. Code Section 25-115(c)(5)(1997 Supp.), providing for the remonstrants to be heard. Mary Weirich filed a request to initiate the section 14(e) petition process and Thomas C. Wells, Chair, on behalf of the Advisory Neighborhood Commission (ANC) 6A, and Peter Waldron, Single Member District Commissioner, ANC 6B, filed section 14(b) protest letters. All opposition was filed in a timely manner.

The official records of the Board reflect that the parties have now reached agreements which have been reduced to writing, and have been properly executed and filed with the Board. Pursuant to the agreements, dated October 16, 1998 and November 30, 1998, the protestants

have agreed to withdraw their opposition, provided however, the Board's approval of the pending application is conditioned.^{1/}

Accordingly, it is this 10th day of February 1999, **ORDERED** that:

1. The protests of Mary Weirich, Gottlieb Simon, and Peter Waldron, be, and the same hereby, are **WITHDRAWN**;

2. The above-referenced Agreement between the parties, be, and the same hereby, is **INCORPORATED** as part of this Order;

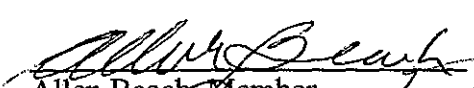
3. The application of Xando, Inc. t/a Xando Coffee and Bar for a retailer's license class CR – (new) at premises 301 Pennsylvania Avenue, S.E., Washington, D.C., be, and the same hereby, is **GRANTED**; and,

4. Copies of this Order shall be sent to the Protestants, the Attorney for the Applicant, and the Applicant.

District of Columbia
Alcoholic Beverage Control Board


Vannie Taylor, III, Esquire, Chair


Dennis Bass, Member


Allen Beach, Member


Laverne King, Member

^{1/} The official records indicate that three (3) separate agreements have been executed between the following parties: (1) Mary Weirich and the applicant, dated October 16, 1998, (2) Thomas C. Wells, Chair, on behalf of ANC 6B and the applicant, dated November 30, 1998 and (3) Peter Waldron, SMDC, ANC 6B and the applicant, dated November 30, 1998.

Xando, Inc.
t/a Xando Coffee & Bar
Page two



Max Salas, Member

Eydie Whittington, Member



Duane Wang, Member